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SPEECH

OF THE

REV. SAMUEL G. WINCHESTER,

IN DEFENCE OF THE

ACT OF THE SYNOD OF PHILADELPHIA,

IN THE CASE OF THE

ASSEMBLY'S SECOND PRESBYTERY

OF PHILADELPHIA.

DELIVERED IN THE GENERAL ASSEMBLY, MAY, 1834.

PHILADELPHIA:
WM. S. MARTIEN, PRINTER, GEORGE STREET.

1834.

PHILADELPHIA, *May* 29, 1834.

At a meeting of a number of individuals, members of the Synod of Philadelphia, held on Thursday, May 29th, 1834, the Rev. James Magraw, D.D. was appointed Chairman, and Rev. David M'Kinney, was appointed Secretary. On motion it was

Resolved, That Rev. James Magraw, D.D. and Rev. Jas. C. Watson, be appointed a committee to wait upon the Rev. *Samuel G. Winchester*, and request of him a copy of the Speech delivered by him before the General Assembly of 1834, in the case of the "Appeal and complaint of the Second Presbytery of Philadelphia," against the Synod of Philadelphia, for the purpose of publication in any form which may be deemed most expedient.

JAMES MAGRAW, *Chairman.*

DAVID M'KINNEY, *Secretary.*

In compliance with the above request, the following draft of the speech alluded to, as far as it can be recollected, (it having been delivered extemporaneously) is submitted to those interested in the subject.

S. G. WINCHESTER.

SPEECH.

Moderator,—Before entering fully into the merits of this case, permit me to notice a remark made by the last speaker, in relation to the act of the Presbytery of Philadelphia, by which, but one ministerial and one lay delegate are commissioned to this Assembly. It was said that by the act of Synod appealed from, that Presbytery was entitled to a larger delegation on this floor, but by sending up their present number, that Presbytery has declared its own belief in the *unconstitutionality* of the Synodical act. But, Sir, by a reference to the minute of Presbytery appended to the commission of their delegates, it will appear that the *right* to an increased number, is expressly claimed, but the exercise of it waived from motives of prudence and peace.

The Presbytery were unwilling that so grave and important a subject as that now before you, should be decided on a preliminary question.

Sir, had the Presbytery insisted on the exercise of their right, this weighty subject, with all its difficulties, would have met you on the threshhold; and your proceedings would have commenced in the midst of agitation and excitement. It was with a view to peace and order, Sir, that the Presbytery adopted the course which is now attempted to be construed to its disadvantage.

The question before the court is brought up by appeal and complaint. To the jurisdiction of this court over the subject, in its present form, and as thus brought up, I enter a solemn plea. Not that I would now have the question decided on this issue, but as the merits of the case have been gone into at large by the complainants, I would urge this plea as an argument for dismissing the appeal and complaint. The act of Synod complained of, consists of three parts. 1. The reception of the so called Second Presbytery of Philadelphia, as a constituent member of Synod, agreeably to the order of the Assembly of 1832, by which that Presbytery is attached to the Synod of Philadelphia. 2. The Union of that Presbytery with the Presbytery of Philadelphia, in virtue of the power of Synods to unite and divide Presbyteries. 3. The division of the Presbytery thus constituted by the union, in virtue of the same Synodical prerogative. The act of Synod, though consisting of these three distincts parts, is nevertheless *one*, and is so regarded in the appeal and complaint. Against such an act no appeal nor complaint can constitutionally lie. Our ecclesiastical judicatories are of a complex character, like the Senate of the United States. At one time, and for specified purposes, they are *legislative* bodies; at other times, and for other purposes, they are *judicial* bodies. This distinction is recognised throughout the Constitution of our Church. And no where does that Constitution sanction the interference of one character with the other. On the contrary, when a judicatory is about

to transact *judicial business*, there is a transition of the body from its legislative to its judicial character; of this transition the Moderator is required to give due notice, and to enjoin on the members to recollect and regard their high character, as judges of a court of Jesus Christ. (See "General Rules for Judicatories." R. 39.) Of this transition on the present occasion, you, Sir, have more than once notified this Court.

We contend that it is only from the decisions of a judicatory sitting as a court, for *judicial* business, that appeals and complaints can constitutionally be entertained; and that from the acts of judicatories in their legislative capacity, no appeal nor complaint can constitutionally lie.

That this is the correct interpretation of our constitution will appear if we examine the nature of the remedy by which redress is sought in the present instance. You have before you an appeal and complaint. 1. We will notice first, the remedy by *appeal*. It may be proper to remark in this place that the sections on appeals and complaints come under the head of "DISCIPLINE," as will appear by a reference to the book. The division, union, and erection of Presbyteries are provided for under the head of "*Form of Government*." Now it is a question for your consideration, whether a judicatory can constitutionally resort to the "discipline" of the church, for the purpose of erecting, dividing and uniting Presbyteries. In noticing the remedy by appeal, I would call your attention—First, to the *nature* of appeals. Secondly, to the *privilege* of appeals.

1. The nature of appeals. "An appeal is the removal of a cause already decided, from an inferior to a superior judicatory, by a party aggrieved."—Book of Discipline, Chap. VII. Sec. III., § I. The word "cause" is here used technically, and therefore is a *judicial* matter, and contemplates a judicial issue. Again, § IV., "Appeals may be either from a part of the proceedings of a judicatory, or from a defective sentence." A *sentence* is that from which appeals are to be taken. This too is a technical word, and shows that the proceedings alluded to are *judicial* proceedings. Hence the first step in conducting the appeal, is to read the sentence appealed from, together with the *testimony* in the case. From this it is manifest that a *judicial* sentence, not a *legislative* act, is the only legitimate matter of appeal. This will more fully appear to any one who will attentively read the whole of the third section of Chapter VII. It speaks of "a party aggrieved," "a regular trial," "refusal of reasonable indulgence to a party on trial," "hurrying a decision before the testimony is fully taken," "declining to receive important testimony," "prejudice in the case." These are stated to be proper grounds of appeal. When an appeal is taken up, the records of the inferior judicatory in the case, "including all the testimony and reasons of their decision," must be read. This same article also speaks of a "judgment pronounced," "remitting the cause," "a new trial," "original parties." The nature of the sentence from which an appeal is contemplated by this article, is such as "suspension," "excommunication," "deposition from office," or some

lighter sentence, in which latter case, all further proceeding in the cause is stayed by an appeal till it be finally issued.

2. In regard to the *privilege* of appeals, it is only necessary to observe that it belongs only to an *original* party.

"All persons who have submitted to a *regular trial* in an inferior, may appeal to a higher judicatory."—Chap. VII., Sec. III. § II. "An appeal shall in no case be entered except by one of the *original parties.*"—§ XVII.

Now the questions pertinently arise: 1. Was the act of Synod appealed from, a *judicial* decision? Was the Synod constituted as a court for judicial business? Was such a transition from its legislative character necessary or constitutional, in order to pass the act appealed from? Was the reception of the Second Presbytery, its union with the First, or the subsequent division of the Presbytery of Philadelphia, a judicial sentence pronounced against the appellant Presbytery? 2. Was the Second Presbytery "a party at the bar" of Synod? If so, where is the proof of their citation and arraignment, in the records of the Synod? What were the charges tabled against the accused? What was the testimony on which the Synod grounded their decision? The Judicial Committee, in reporting this case to the House, have neglected to perform a very material duty, if this be indeed judicial business. They have not reported the order in which the *testimony* shall be read: and the court itself has erred in not adhering to the Book which requires the testimony to be read. (See ch. VII. sec. III § VII.) If the Second Presbytery were the one party, who were the other at the bar of the Synod? If the Synod itself were a party, how does it appear that one of the parties is at the same time the judge in the case? Is it competent to a Synod to sit in judgment on its own case? If you regard the Synod as a party in this case, you will have some difficulty in issuing it agreeably to the rules of of the Book. In the ninth paragraph of the Section on Appeals, a distinction is made between "original parties" and the "inferior judicatory." But in this case the distinction is lost sight of; a circumstance which the Book never contemplated. Who then were the parties before the Synod? There were no parties: and therefore there could be no appeal. But if there had been parties before the Synod, it is manifest that the Second Presbytery of Philadelphia could not have been one of them. The Second Presbytery was not a constituent member of the Synod, until they were made such by the act of reception, and therefore could not have been a party to any proceeding, had previous to their reception. And if the appeal be heard, on the ground that the Second Presbytery was a member of Synod before such act of reception, it will be a prejudgment of the case. For if that Presbytery were a member, she was made such by the act of the Assembly. This the Synod have denied, and here is the real question on which the parties are at issue. But, if it be contended that the Second Presbytery was made a component part of Synod by the act of Assembly of 1832, I wish it to be distinctly kept in mind by this court, as I shall hereafter advert to it again. Is it pretended, that being received

by the Synod as a Presbytery, they were competent to appeal? We reply that their existence in the Synod as a Presbytery, was only momentary; for the same act that received them, amalgamated them with the Presbytery of Philadelphia, and of course destroyed their separate Presbyterial existence. They do not appeal as *individual members* of Synod, for such they undoubtedly were, after the act of reception, but they appeal as a *Presbytery*. Besides, they do not in fact appeal as members of Synod, made such by the act of Synod, but as such by the act of the Assembly. Here again the same question, involving the merits of the case, occurs. In no sense therefore can the former Second Presbytery be considered a party to the transaction from which they have appealed, and if not a party, they can not appear before this court as appellants.

I would farther observe in relation to the privilege of appeals, that the party appealing in this case, has no constitutional existence, and cannot therefore be recognised by this court. The appellants come before you not as *individuals*, but as a *Presbytery*. We contend that the appellants as a Presbytery had no existence at the time the appeal was taken, and were therefore incompetent to any Presbyterial act. That Presbytery was amalgamated with the Presbytery of Philadelphia, and its separate existence thereby destroyed. The only argument that can be urged even with speciousnes against this position, are, 1. That the former Second Presbytery had, at the time of their appeal, no official notice of the act of Synod; or, 2. That the act of the Synod amalgamating them with the Presbytery of Philadelphia, was null and void. In reply to the first of these arguments, we observe—1. That it is true, no notice of the act, signed by an officer of the Synod, was published to the world. Yet two members of that Presbytery, a minister and an elder, were present in Synod at the time the act passed; and the elder actually took his seat as a member of Synod in virtue of the act, and participated in its subsequent deliberations. 2. If no official notice of the act of Synod was ever given, how could that Presbytery make that act the ground of Presbyterial proceeding? With what propriety could they appeal from a decision of which they had no official notice? If the plea of want of notice be set up, it can be rebutted by their own records. And if the plea be sustained, then there was no subject of appeal properly and officially before that Presbytery. The very argument (namely, having no notice) by which they would urge their right to appeal as a Presbytery, does at the same time prove that there was before them no subject of appeal. This [is their dilemma. But 2dly. Will it be contended] that the act of Synod was null and void? The acts of an individual or of an association, may be divided into those that are *void*, and those that are *voidable*. Those acts are void which the individual or association is incompetent to do. Those are voidable, which a higher authority, having jurisdiction in the case, may regularly reverse or repeal. Such acts being voidable, are in force till reversed or repealed. The authority of the Synod in the case at bar, must be determined by a reference to the Constitution, the only instru-

ment which declares and defines the powers of judicatories; this point I shall examine presently. If the Constitution clearly grants to Synod the power in question, their acts performed in the exercise of such power, cannot be void, and I shall show, in another place, are not even voidable by the General Assembly. The appellant Presbytery admit the constitutionality of the act of Synod. Its language is, "It (the Synod) has merely adopted a *constitutional* pretext for counteracting the repeatedly expressed judgment of the Assembly." Though it be a *pretext*, as it has been unadvisedly called, yet it is *constitutional*. Again: "We think they have exercised their power of uniting Presbyteries very injudiciously." See Appeal and Complaint, § III. Their power in this matter is here fully admitted, but the wisdom of its exercise, in the present case, called in question. The injudicious exercise of power does not render void the acts that emanate from that power. If those acts be unconstitutional, they are void and not obligatory. But if they be constitutional, however unwise, injudicious, inexpedient, or oppressive to a disaffected party, they are binding, until reversed by a competent authority. I repeat it, therefore, that the Assembly cannot declare void the act of Synod, unless it can be made to appear that the act itself is unconstitutional, and that the Synod in passing it, transcended their powers. And whether the appellants have made this to appear, I appeal to the judgment and the candour of this court, and of all thinking men who are, or who hereafter shall become acquainted with the merits of this case. But if the constitutionality of the act of Synod is to be called in question, by what judicatory is it to be done? Will the former Second Presbytery sit as a court of review and control, over the acts of the Synod, and, *ex cathedra*, pronounce upon the constitutionality or unconstitutionality of its proceedings? Is it competent to a Presbytery thus to decide upon the acts of a higher judicatory? What did we hear from the same Presbytery when the Synod of Philadelphia was charged with usurping similar authority, and judging of the legality of the acts of the Assembly? We were very plainly told it was rebellion and nullification, thus to erect the Synod into a reviewing court, over the head of the General Assembly. The principle of subordination, and of course, the duty of submisson, is the same in both cases.

But we are told that by the appeal, the separate Presbyterial existence of the appellants is continued, and still remains unaffected by the act of Synod appealed from. But we have seen that no appeal can lie against the act of Synod, it being a legislative act, not a judicial decision. And that the appellant Presbytery was in no sense a party to the transaction. A decision of these preliminary questions will be a decision of the whole case. If any judicatory, or member of it, not a party, can, by an appeal, render ineffectual the legislative acts of a superior judicatory, then there is an end of all efficient legislation, an end of all efficient administration of the government of our church.

To contend that the appeal continues the existence of the Second

Presbytery, is taking for granted the right of appeal in this case, which is disputed. And it is always inconclusive and unfair, to argue from matter of fact to matter of right. If this were a judicial case, admitting of appeal, it could be clearly shown from the 15th paragraph of the Section on Appeals, that this is one of those cases there mentioned, in which the appeal does not stay proceedings. It is there said that if the sentence appealed from, be suspension, or excommunication from church privileges, or deposition from office, it shall be considered *as in force*, until the appeal shall be issued. No such sentence could have been pronounced in the case before you, because it was not a judicial process. But we may reason analogically. Deposition from office is the destruction, for the time being, of the ministerial character of the person deposed. The act of Synod was the destruction of the separate Presbyterial existence of the appellants, and was a legislative deposition of that Presbytery. And, Moderator, if you will enforce this legislative act under the operation of an appeal, I claim for it so much of that operation as "*continues it in force* until the appeal shall be finally issued." I shall insist upon an equal distribution of the advantages of the appeal to both parties. And if you entertain this appeal, you must also regard the act appealed from "*as in force* until the appeal be issued."

In concluding what I have to say on the remedy by appeal, let me call the attention of the Court to the *decision* which the Book authorises in cases of appeals. The tenth paragraph of the Section on Appeals reads thus—"The decision may be either to confirm or reverse, in whole, or in part, the decision of the inferior judicatory; or to remit the *cause*, for the purpose of amending the record, should it appear to be incorrect or defective; or for a *new trial*." Here you have the only kind of decision which the Book contemplates in the case of an appeal. You are indeed asked to declare the act of Synod null and void. But this you cannot do in issuing an appeal. Not a line in the Constitution authorises you to make such a decision in issuing an appeal. If the act appealed from, be unconstitutional, it cannot be appealed from. It is *ipso facto* null and void. The course to be pursued in such a case, is to dismiss the appeal, take up the subject in the constitutional way, hereafter to be pointed out, and declare the act totally void. That this is a sound construction of the remedy by appeal, farther appears from the eleventh paragraph of the section on appeals, which reads thus, "If an appellant, after entering his appeal to a superior judicatory, *fail to prosecute it*, it shall be considered as abandoned, and the sentence appealed from *shall be final*." The language is imperative, "*shall be final*." The General Assembly can not alter nor reverse it. This is a right secured to inferior judicatories by the Constitution. But, Sir, shall the delinquency of a party or his voluntary abandonment of an appeal, *make* "*final*," and operative an UNCONSTITUTIONAL ACT? For example: suppose the act of Synod in this case to have been UNCONSTITUTIONAL, and the appellant Presbytery had abandoned the appeal, would that act of Synod have been final and operative, and beyond the reach of this Assembly? If this is a

legitimate subject of appeal, it would. The Book, a higher authority than this Assembly, has explicitly declared that it would be "*final.*" If you declare the act of Synod to be *void*, you do thereby declare that it was no proper subject of appeal. You cannot therefore, without a gross and manifest violation of the Constitution, entertain the appeal, and at the same time declare the act appealed from, to be null and void.

II. I come now in the second place, Moderator, to notice the complaint. As no appeal in this case can lie against the Synod, so neither can a complaint, especially where the Presbytery complaining, has no existence. It is often said that any one may complain. This may be true where the subject matter admits of complaint. What says the book? "Another method by which a cause which has been decided by an inferior judicatory, may be carried before a superior, is by complaint." "The cases in which complaint is proper and advisable, are such as the following, viz. The judgment of an inferior judicatory may be favourable to the only party who has been placed at their bar; or the judgment in question may do no wrong to any individual; or the party who is aggrieved by it may decline the trouble of conducting an appeal. In any of these cases no appeal is to be expected. And yet the judgment may appear to some of the members of the judicatory, to be contrary to the constitution of the church, injurious to the interests of religion, and calculated to degrade the character of those who have pronounced it. In this case the minority have not only a right to record, in the minutes of the judicatory, their dissent from this judgment, or their protest against it, but they have also a right to complain to the superior judicatory." (Chap. VII., Sect. IV., § III.)

From the foregoing it appears—1. That the decision of which complaint can be made, is the decision of a *cause*, a word used in the book, technically. This further appears from the expression "party who has been placed at the bar." A *judicial* decision, therefore, is the proper subject of complaint. 2. There can be no complaint admissable, except in such cases as will admit of appeal. It is true, the party at the bar will not appeal, if the decision be in his favour, and in such a case other members of the judicatory may complain; but this arises from the character of the decision, not from the nature of the case. The nature of the case is such as to admit of appeal if the decision be against the party at the bar, and therefore let the decision be as it may, the right of complaint remains.

It may appear to some of the members of the court, that although no appeal in this case can constitutionally lie, yet a complaint may. This impression may have been made by the very general phraseology of the second paragraph of the section on complaints. But a careful perusal of the whole section will remove that impression.

We should not detach a paragraph from its context, and interpret it, in its isolated posture, without reference to the connection on which it depends. We do not thus interpret the sacred volume. Nor

should we so interpret any connected treatise. This section like that on appeals, evidently contemplates *judicial process.*

It also speaks of "a judgment" and "a party placed at the bar." It is but another sort of *judicial process*, unattended by some of the difficulties of appeals. It is "another method" of trying "a cause." By what art of construction or interpretation, these articles and this language can be made to refer to *legislative acts*, I am unable to discover.

In speaking of the remedy by appeal, I argued first from the *nature*, and secondly from the *privilege* of appeal. Now as to the nature of these remedies, it is the same in both. They are modes of *judicial process.* But with regard to the privilege of prosecuting them, they differ. The remedy by complaint consists in this difference. Only "original parties" can prosecute an appeal. But it was foreseen that cases might arise where "the party aggrieved would decline the trouble of conducting an appeal," and yet the sentence be oppressive and unjust, and "injurious to the interests of religion." What was to be done? Here was a difficulty. The sentence ought not to remain in force. But how can it be remedied? The aggrieved party declines conducting an appeal. No others can do it. This very difficulty gave rise to the remedy by complaint, as the section itself states. You at once see, that the difficulty does not relate at all to the *nature* of the case, it is still a judicial process that is contemplated, but to the *privilege* of conducting the remedy. While therefore it is true that any person may complain, yet it is equally true that a complaint can only lie when an appeal might lie, if the party aggrieved choose to prosecute it. Complaints therefore, though they may be prosecuted by any person, yet can only lie against a *judicial decision.* The same arguments which show that the *appeal* in this case cannot lie, bear with equal force upon the remedy by complaint.

It may now be asked, is there no way of redressing the evil complained of by the Second Presbytery? Is there no way of bringing up this question constitutionally before the Assembly? I answer, most certainly. And it is a wise provision, but of late very much overlooked and neglected. In our Constitution it bears the name of "*General Review and Control.*" (See Chap. VII. Sec. I.) "In reviewing the records of an inferior judicatory, it is proper to examine, *First*, whether the proceedings have been constitutional and regular: *Secondly*, whether they have been wise, equitable, and for the edification of the church: *Thirdly*, whether they have been correctly recorded." § II. "It may be that, in the course of review, cases of irregular proceedings may be found so disreputable and injurious, as to demand the interference of the superior judicatory. In cases of this kind, the inferior judicatory may be required to review and correct its proceedings." § III. "No *judicial decision*, however, of a judicatory shall be reversed, unless it be regularly brought up by appeal or complaint." § IV. Here also it is clearly taught that appeals and complaints are confined to judicial matters. These modes of process were provided expressly for judicial cases, and were never intended

to be otherwise applied. The manner in which irregular or unconstitutional legislative proceedings are corrected as follows: "When any important delinquency, or grossly unconstitutional proceedings appear in the records of any judicatory, or are charged against them by *common fame*, the first step to be taken by the judicatory next above, is to cite the judicatory alleged to have offended, to appear at a specified time and place, and to show what it has done, or failed to do in the case in question; after which the judicatory thus issuing the citation, shall remit the whole matter to the delinquent judicatory, with a direction to take it up and dispose of it in a constitutional manner, or stay all further proceedings in the case, as circumstances may require." § VI. Here then is the only constitutional way in which the proceedings of the Philadelphia Synod, in the case before you, can be corrected or repealed. Is not here a special provision for just such a case as is complained of by the former Second Presbytery of Philadelphia? Let the Synod be cited before the Assembly, and if its proceedings, according to § II. be "unconstitutional," or "irregular," or "unwise," or "unjust," or "not for the edifiation of the church," let it be censured, or directed to "take up the matter and dispose of it in a constitutional manner." In this way should the case have come before the Assembly in 1832. And it will be strange indeed if, with this plain, wise, and constitutional method before their eyes, the Assembly again issue this subject in any other. It is made the duty of Synods "to take effectual care that the Presbyteries observe the Constitution of the Church." Chap. XI. § IV. A similar duty devolves upon the Assembly, in regard to the Synods. These bodies are not to wait for appeals or complaints against the unconstitutional proceedings of the inferior judicatories. It is their duty to see that such proceedings be corrected, and that the Constitution be observed. But the reason why the method by appeal and complaint is in most cases preferred, may consist in the wrongful advantage which the complaining party derives from the exclusion of the body complained of, from the house, and of course from a vote. This is indeed a more sure method of gaining a point, but one most unfavourable to justice, and to the rights of the body excluded.

If complaints against the legislative acts of our judicatories are to be listened to, where will they end? What strife and contention will thereby be engendered, and continued, and encouraged? Besides, if this practice is to continue, and be sanctioned by the highest judicatory, and if it be the privilege of any one, to complain of any act, what inferior judicatory will decide on any question, when they know that they will be excluded from a vote on the same question in a higher body? Will not the lower judicatories be thereby induced to "refer" every question, and thus retain their right of deliberating and voting in the higher judicatory? Suppose, for example, that the large Synod of New-York should decide some point, or adopt some measure of vast importance, and there should be but one troublesome member always to be found in the opposition. By sanctioning the principle contended for by the complainants in this case, you put it into the

power of that one member to bring the whole matter before the Assembly, and exclude that Synod from a vote on its decision. This is a question deeply affecting the rights of inferior judicatories, seriously jeopardizing their efficiency, and loudly claiming their solemn consideration. The General Assembly, by encouraging and countenancing this unconstitutional practice, are greatly increasing their own business. Soon we shall hear of no appeals nor complaints, but every question will be referred. The lower judicatories will decide none, and thus become both useless and troublesome. No lower judicatory will, by deciding a question, voluntarily and certainly exclude itself from a higher. This could not be expected. Such is the consequence of departing from the Constitution, to "carry a point." Let us then get back to the old land marks, and walk in the old paths; and let our highest judicatory magnanimously set us the example.

If, Moderator, it should appear to the court, from the argument now urged, that this case is *Coram non judice*, not properly before them, we ask that it may be dismissed. But as we do not propose to submit the case at this stage of the argument, I will proceed to an examination of its merits more in detail, and I trust you will indulge me in two preliminary remarks. First: I cannot discover the object which the complainants have in view, in raking up old differences of rather local interest than otherwise, and which we had hoped were forever buried and forgotten. Why open afresh the wounds which once profusely bled, but which we had hoped were in some good degree healed? Why call to mind, and press upon the attention of this court, circumstances of distant date, but calculated to awaken prejudice and angry feeling, so unfavourable to the impartial investigation of this subject? They have no other connection with the question before you, than that which prejudice and ancient alienations create in the minds of those who once were, or now are, excited by them. Is all this done for *effect?* The second remark I would make is, that the complainants have dwelt chiefly and emphatically on the power of the Assembly, in regard to the erection of new Presbyteries. This point was mainly pressed, as if it were the material one before you. Why is the attention of the court thus diverted from the real question, and directed with anxious and pressing importunity to one, not necessarily involved in the question before you? Is it because here they can shield themselves under the decision of the Assembly of 1832? Is it in order to draw from us an attack upon that decision, and upon the Assembly that made it? Is it in order to change the real ground of controversy, and to plant themselves upon more advantageous ground before the Assembly, than the matter of their complaint will furnish? If they could succeed in guiding our shafts, and directing them against the Assembly, instead of themselves, they well know that it would be one way to prejudice our cause and promote their own. There is a sort of ecclesiastical pride, under the influence of which, one Assembly feels itself bound to support the acts of another. To this pride, the argument on the power of the Assembly to do what they did in 1832, may be intended to appeal. The artifice may become success-

ful, and the influence of this pride may be felt in the final decision. But I trust that this court will not forget nor disregard its high character and solemn responsibility as a court of Jesus Christ.

I had not intended to do more than glance at the power of the Assembly to erect new Presbyteries, but I am disposed to follow them in the course which they have seen it most to their advantage to take in the argument, not neglecting however to bestow a full share of attention upon the true question before the court. We are by no means unwilling to meet the complainants on that argument, although a decision on that question in 1832, may secure a similar one at this time. Let it be remembered that votes are not arguments, nor are they answers to arguments.

It has been asserted more than once, that the Assembly have decided this question again and again. The allusion here was to the *recommendation* in 1831—to the act of 1832, erecting the Second Presbytery, and to the famous *compromise* in 1833. I attach but little importance to this supposed threefold decision of the Assembly: but as others may regard it as an important circumstance, it may be proper to observe, that I have learned to distinguish between *recommendations* and *commands*. To recommend an act is one thing, to do the act is quite another thing. As to the compromise, the very word imports the opposite of a decision. It was a *refusal* to decide, so that the act of 1832 stands alone.

Doubtless, the principal reason why the debate has taken this course, namely, on the power of the Assembly to erect new presbyteries, is that the complainants ask you to continue their separate Presbyterial existence, and also to continue that of the Synodical Second Presbytery north of Market street. Now, Sir, the power contended for is necessary in order to do this, for it will amount to the erection of a new Presbytery, as can easily be shown. It will be borne in mind that the same act which erected the Presbytery north of Market street destroyed the Assembly's Second Presbytery. If you declare that act of Synod void, you thereby declare that no such Presbytery as the Synodical Second was ever formed, for it could not have been erected by an act that was null and void. To continue them as a Presbytery therefore, is in fact to erect them into a Presbytery, which requires the very power now claimed for you by the complainants. On the other hand, if you decide that the act of Synod was valid, (and you must decide between these two alternatives) you thereby declare the Assembly's Second Presbytery to have been destroyed by its amalgamation with the first. And if you nevertheless continue it in existence, it must be by re-erecting it, which also requires the power contended for by the complainants. In order to grant their request, therefore, it is very material that you possess and exercise this disputed power. The complainants feel no desire to have the Synodical Second Presbytery destroyed, but rather rejoice with them in their happy riddance of a connection in which they could not be happy. This, Moderator, is the indulgence of an old

grudge, and wholly unsuited to the gravity of a public document. I exceedingly regret the expression of such feelings by the complainants.

I am aware that attempts have been studiously made to cast odium on the Presbytery of Philadelphia, and to represent us as a den of wild beasts. All this may have its designed effect in determining the final vote in this and other cases, where that Presbytery is deeply interested. But I could not rejoice in a conquest so achieved. The argument on the power of the Assembly to erect new Presbyteries within the bounds of a Synod, has two parts. The first relates to the power itself; the second to the nature or description of Presbyteries to be erected. In entering upon the examination of this question I shall reverse the order, and take up the second branch of the argument first. 1. Admitting, for the sake of argument, that the Assembly has the power to erect new Presbyteries, does the Constitution of our Church contemplate or recognise a Presbytery formed upon the principle of "elective affinity," such as the complaining Presbytery before you? The name itself implies a difference of doctrine. It does not need a chemist to tell us the meaning of the phrase, as applied to eclesiastical affairs. It can refer only to doctrine, ecclesiastical polity, or personal attachment. The complainants themselves have traced all our difficulties to difference in doctrine. Dr. Ely, in detailing to the court a history of his grievances, clearly established this point. Mr. Patterson did the same, and declared that the Assembly did sit in judgment upon the doctrines of Mr. Barnes' Sermon, but neglected to inform us of their decision. Now we take these complainants at their own word. I have always maintained that our difficulties arose from, and are perpetuated by, disagreement in doctrine. Here then, we have the secret spring which first put in motion, and which continues to sustain, the odious principle of "elective affinity." These differences were not minor, but so great as to render it impossible for those who differed, to live and act together in the same Presbytery. Both parties however professed adherence to the public standards. But those who opposed their separation, were never suspected nor charged with departures from sound doctrine. A separation on this principle was refused by the Synod now arraigned at your bar, because, in their judgment, it was an obnoxious and ruinous principle, unknown to the Book, and repugnant to its letter and spirit. But the Assembly granted their request, and erected a Presbytery on the avowed ground of irreconcilable difference. Both parties, however, were recognised as good Presbyterians. Before this separation, the divisions among members, were comparatively unknown to the mass of the people. But when the Assembly in its wisdom, arrayed the parties in different ecclesiastical organizations, the one over against the other, the world saw and wondered at the posture in which we stood. The people accordingly took sides, and wrangled among themselves. The professed object of the Assembly and of those who sought the separation, was *peace* and *order* and *the support of the Constitution!* Thus were divisions recognised,

sanctioned and perpetuated, where there was *professed unity of faith and order!* "Union, peace, and love," was the watchword, while division, distraction and alienation were the things accomplished! Thus the Assembly declared their willingness and determination to accommodate, with a separate organization, all those who so far differed from their brethren, as to render a separation desirable. They thus held out inducements to any disaffected minority to seek and promote divisions in the Church, on the principle of elective affinity. Is this the Constitution of the Presbyterian Church? "A Presbytery consists of all the ministers, and one ruling elder from each congregation, within a certain district." (Form of Gov. ch. X. § II.) This "certain district" must be determined by geographical lines. The "district" which contains an affinity Presbytery is so "*uncertain*" that it is impossible ever to determine it. Its lines are intangible and undefineable, and exist in the mutable partialities and whims of its members. It may extend its limits within the boundaries of every other Presbytery in the Church. It may cover the whole earth, and yet be a distinct and separate Presbytery. It may, so far as its bounds are concerned, be as any distinct denomination, running into, and covering the ground of, every other Presbytery, and be, at the same time, but an integral part of the Church composed of those Presbyteries. It is *imperium in imperio.* Suppose the Congress of the United States, for the purpose of securing two additional votes in the Senate, should form an elective affinity state, composed of a particular party, and having no geographical boundaries nor "local habitation," what relation would it bear to the Constitution of the United States? And yet it would be no greater anomaly than a Presbytery formed on the same principle. The paragraph above quoted declares that a Presbytery shall "consist of *all* the ministers &c. within a certain district." But the principle contended for, completely destroys this portion of the Book; for the Presbytery of Philadelphia does not, according to the decision of the Assembly of 1832, consist of *all*, but of a *portion* only of the ministers &c. within its district. The formation of such a Presbytery is a manifest violation of the Constitution. If we must have divisions on this principle, begin with the General Assembly, not with Presbyteries, and the objection will be removed. The continuance of such a Presbytery, is a standing contrariety to the spirit and letter of our Constitution. There may be members of this court, who, while they would sustain this Presbytery, nevertheless wish to be considered as opposed to the principle of elective affinity. But this is out of the question. A deliberate vote to new-create or continue such a Presbytery, can never consist with a sincere opposition to the principle. If it were a question of *expediency* and not of *constitutionality*, it might be otherwise. But to believe in the unconstitutionality and ruinous tendency of such a principle, and yet to vote for its application, is an obvious contradiction, a clear absurdity, and is a reflection either upon a man's common sense, or his common honesty. All thinking and unprejudiced minds will so regard it. You cannot, Moderator, shift the ground of controversy, from that of constitutionality to that of ex-

pediency. You cannot bribe nor cheat the judgments of men. All see and feel it to be a question of *constitutionality*. And as such, you must meet, and decide it. No subterfuge nor sophistry can decoy the unbiassed mind into the belief, that this is a matter of mere expediency, about which men may safely differ. No, Moderator, to the question of *constitutionality*, I repeat it, you must come, and there stand or fall.

2. But I hasten to the argument on the power of the Assembly to erect a Presbytery on any principle, within the bounds of a Synod. On this point the Constitution is extremely plain and satisfactory to my mind.

In the formation of that Constitution, the Presbyteries have made a wise distribution of definite powers among the several judicatories. The Constitution and the Assembly are creatures of the Presbyteries, who may, by a competent majority, alter or abolish them at pleasure. The Presbyteries are the source of constitutional authority and power.

The Assembly is a body of defined and delegated powers, subject to restriction or enlargement by the Presbyteries. The Presbyteries of the Assembly. As therefore its powers are defined and limited, may interpret, modify, enlarge, diminish, or entirely destroy the powers it cannot go beyond, but must act within them. The powers not expressly nor impliedly delegated to, are not possessed, by the Assembly The Assembly is the recipient, not the fountain of power. It is an agent with created trusts and acquired prerogatives, not an ultimate Lord with inherent omnipotence. To *Synods*, and not to the Assembly, have the Presbyteries granted the power in question. "The Synod has power to erect new Presbyteries, and unite or divide those which were before erected." Form of Gov. Ch. XI. § IV. In defining the powers of the Assembly the Book says, "To the General Assembly belongs the power of erecting new Synods, when it may be judged necessary."

Here is a specific delegation of power. And it is a well known and acknowleged rule, that the delegation of powers is always evidence against the possession of those not delegated. The specification of powers is evidence against the delegation of powers not specified. Apply this rule to the case before you, and where is the authority now claimed, vested in this body? Point out the paragraph giving to this body the power now contended for.

The act of the General Assembly, therefore, erecting the affinity Presbytery was unconstitutional. It was the exercise of usurped power, as they themselves shall testify. The argument which was urged on the floor of the Assembly, against the right of that body to create the affinity Presbytery, was, not only that such a Presbytery was unknown to our Book, but that no power to divide Presbyteries, had ever been granted to the Assembly, or was specified among the powers of the Assembly. The argument was, that a power not specified among those of the Assembly, but distinctly granted to the Synod, did not belong to the Assembly. This construction of the Book was overruled. But in another case, involving the same principle, the

Assembly adopted this very construction, as the following extract from their Minutes will show.

The Committee to whom was referred Overture No. 14, viz: "Is a minister of the Gospel in our connexion, *ex officio*, authorized to organize churches in the bounds of Presbyteries, without any previous order of Presbytery, directing such organization?" made a report recommending the following resolution, which was adopted accordingly, viz.

"*Resolved*, That except in frontier and destitute settlements, where, by Form of Government, Chap. xv. Sect. 15., it is made a part of the business of evangelists to organize churches; and except in cases where it is exceedingly inconvenient to make application to a Presbytery, for which provision is made in the act of Assembly of 1831, it is not the prerogative of a minister of the Gospel to organize churches without the previous action of some Presbytery directing or permitting it; *since in Form of Government, Chap. X. Sect.* 8, *to form new congregations, is enumerated among the powers of the Presbytery; and since in Chap. IV. of Bishops or Pastors, no mention is made of any such power being lodged in the hands of an individual minister.*—(*Minutes of Gen. Assem. for* 1833, *page* 496.)

The argument urged against this construction is, that the General Assembly, being the supreme judicatory, is invested with all the powers of inferior judicatories. That the greater includes the less. That if Presbyteries or Synods have such and such prerogatives, the General Assembly, being superior to them, *a fortiori*, has the same prerogatives and may ordain, install, &c., at pleasure.

But the above minute of the Assembly declares that those powers which are not enumerated among those of one body, but are enumerated among those of another, are not possessed by the one, but are possessed by the other.

The contrary is a strange position for *Presbyterians* to maintain. The powers not delegated, nor necessarily implied in the delegation of other powers, are retained by the Presbyteries. A power, to name no others, thus retained, is that of altering or amending the constitution. Surely this is the exercise of supreme authority, and yet the General Assembly have no such authority, but are required to send down any proposed amendments or alterations to the Presbyteries, and if the requisite number agree to the proposition, it becomes a part of the Constitution, even if the Assembly are of a different mind. And if no such concurrence be returned by the Presbyteries, it is not in the power of the General Assembly to make the proposed alterations. The Presbyteries may, if they see proper, annihilate the General Assembly, with all its boasted and assumed powers. It is dependant for its existence on the will of the Presbyteries. This is the doctrine, we apprehend, of sound Presbyterianism.

Again, the admitted right of Synods to unite and divide Presbyteries, and the recent exercise of such authority by the Synod of Philadelphia, show plainly the absurdity of the Assembly's assuming such a power.

Such a power, if it belonged to the General Assembly, would be adverse to, and destructive of, such a power in the Synod: and would present the ludicrous spectacle of a Synod, in the exercise of undisputed authority, undoing and reversing, virtually, the acts of the General Assembly, performed in the exercise of a similar power. The General Assembly in May divides a Presbytery into two or more, and the Synod, in the fall, or next week, if in Session, unites them again: and yet both bodies acted constitutionally! If this be the nature of Presbyterian government and discipline, it is high time they were both thrown to the moles and bats. It is impossible that there should be such conflicting rights in the two bodies. If the Assembly have the right to divide Presbyteries, it does not belong to the Synod to unite them. And if the Synod have such a right as is admitted, then the Assembly have no such right, which we believe is the truth. It is a reflection upon the character of our Constitution, and upon the wisdom and good sense of its framers, to assert that it gives to inferior judicatories the power to annul, virtually, the acts of a superior. A General Assembly and a Synod, alternately undoing each other's acts from session to session, and both claiming constitutional authority, is child's play, a mere farce, which exposes our Constitution to contempt, and our church to derision and scorn.

It is manifest then that the power of Synods to unite and divide Presbyteries is utterly inconsistent with, and subversive of, a similar power in the General Assembly. It is a plain principle, that any body, civil or ecclesiastical, has the right to exercise its constitutional powers over the legitimate subjects of its jurisdiction. Such an exercise, in particular circumstances, may be unwise and injudicious, but that such a right exists, cannot be questioned. Right and obligation are correlative terms. Every right supposes and creates a corresponding obligation. If the Synod has the right to divide and unite Presbyteries, there is an obligation resting upon the General Assembly to respect the acts of a Synod performed in virtue of this right. A right, without the privilege of exercising it, is no right. It is but a shadow, without the substance. There can be no right vested in any one body, adverse to the rights of another. It is a contradiction in terms. The only questions then that seem pertinent to the case in hand are, 1. Whether the Synod have the power and right to divide and unite Presbyteries? 2. Whether such a right be not inconsistent with a similar right in the General Assembly? The first question admits of no dispute, as the book clearly settles it. On the second question, let it be remarked, that the *nature* of this power renders it inconsistent. It is a power to do and undo the same thing, so that it is the mutual power to undo each other's doings, which is utterly inconsistent with the subordinate character of a Synod. If, then, the General Assembly have the power in question, it is a power to abolish virtually, that of the Synod, or so to restrict its exercise, as to render it no longer worth contending for. But let it not be forgotten that this power is expressly guaranteed to the Synod by the Constitution; and to abolish or restrict it, is a contravention of the

Constitution. It is so to modify the grant of power as to render it a nullity. But we have seen that no modification of the Constitution can be effected by the General Assembly. To do this is the exclusive prerogative of the Presbyteries. But it may be urged that this is only a construction of the Constitution, not a modification. True, but it is such a construction as amounts to legislation. It is legislation effected under the name of construction. There is a wide difference between judicial interpretation and judicial legislation. When a civil court so construes a statute, as to extend its operation to objects not within its purview, and not contemplated in its enactment, it is called judicial legislation.

Presbyteries should be jealous of their rights, especially when a mode of construction is adopted and applied, which tends to deprive inferior judicatories of all power, and to make them mere cyphers. Inferior judicatories should insist upon their rights, and upon a maintenance of the Constitution. This book is a mutual compact between ministers and judicatories. We promise subjection to one another in the Lord. This Book defines the method in which that subjection is to be rendered. To exact subjection contrary to its provisions, is tyranny and oppresssion. This Book is a mutual bond and pledge which each has given to the other, and to violate its provisions, is to break faith with those with whom you have covenanted. It is an invasion of personal ministerial rights and privileges, and deserves to be sternly rebuked and indignantly repelled. To violate this pledge is to absolve us from the obligation created by the promise of subjection. The Constitution of our church is the bond of its union, if this be entrenched upon, mutual confidence is destroyed, and that which professes to unite us, becomes itself the subject of protracted and angry discord. It is therefore with the utmost caution and delicacy, that new and questionable constructions of the Constitution should be pressed upon the churches. There is a point beyond which submission to such adjudications becomes acquiescence in the guilt of misrule and maladministration. To such a deprecated crisis we fear that our church is hastening. This Assembly may indeed regard itself the court of last resort, from which there can be no appeal to a higher. But this circumstance can never justify a false construction of the Constitution, nor lessen the criminality of that acquiescence, which does violence to conscience, and contravenes primary obligation. I am aware, Moderator, that this is a delicate subject, but not less important than delicate at this juncture in our ecclesiastical affairs.

Besides the Presbyteries who may ecclesiastically settle the interpretation of their own instrument, the Constitution, there is another tribunal to which an appeal may be forced, by the recklessness of party spirit. Let us beware how we explain away the rights of one another; let us take warning by the results of similar invasions.

The supremacy of the General Assembly is relied on with much confidence as an argument for the power now claimed. It is argued that, being the supreme judicatory, it is invested with all the powers of inferior judicatories. If the Assembly, and not the Presbyteries,

were the source of power, and had not expressly granted it away, there might be some plausibility in this position. But this is not the case. It is a body of limited and defined authority. It has indeed a general supervision of the whole church, but that supervision must be exercised agreeably to rule, and not in violation of express provisions. And I must express my surprise at the confidence with which the complainants have relied upon the very general phraseology employed in stating the radical principles of Presbyterianism, in a note to Chap. XII. of Form of Government. Such reliance seems to betray confidence in their cause, when tried by the express and defined provisions of the Book. If the fact that the General Assembly is the supreme court, does, *per se*, invest it with all the powers of the inferior judicatories, then any restriction of the powers of the Assembly, by the Presbyteries would be inconsistent with such supremacy. Let it be borne in mind that this superiority of the General Assembly, was the principal argument relied on by the Assembly in the assumption of the power in question. Then it is not competent to the Presbyteries, to define and restrict the powers of the supreme judicatory. But is it a fact that the Presbyteries, in their act of creating the General Assembly, did forever divest themselves of the right to modify and restrict the powers of the body thus created? Did the act of the Presbyteries creating the supreme court, *per se*, invest that court with all the powers of the inferior judicatories? Unquestionably not. For example: The Presbytery has power "to examine and license candidates for the holy ministry; to ordain, install, remove, and judge ministers." Chap. X. § VIII. Now, does the supremacy of the General Assembly invest it with these powers? Because it is the supreme judicatory, has it therefore the powers above enumerated? Can the General Assembly come into a Presbytery and remove a minister? Can it arraign and judge a minister? What minister or Presbytery would submit to such an exercise of usurped prerogative? To do these things, I contend, belongs exclusively to Presbyteries. The matter may indeed be brought up and issued in the Assembly by appeal or complaint, but this is in virtue of a special provision to that effect. Again, if the mere fact of supremacy invests the Assembly with all the powers of inferior judicatories, why has the Book gravely and particularly entered into a specification of the powers of the Assembly? The framers of the Constitution considered such a specification necessary, because, unlike the modern interpreters of the Book, they did not suppose that the fact of supremacy, *per se*, invested the Assembly with all the powers of inferior judicatories, or was any evidence that such powers were possessed. The specification of powers is evidence against the delegation of powers not specified. The fact, then, that the General Assembly is the supreme court, can have no weight in the present controversy.

The analogy which is supposed by some to exist between the government of our church and that of the United States, was also relied on by the Assembly: but the truth is, no strict analogy does exist,

and as far as it does exist, it is destructive to the claim set up by the Assembly to the power of uniting and dividing Presbyteries. It is admitted that Synods have this power, but it is denied that they have it exclusively, because the General Assembly is the supreme judicatory. The Congress of the United States is the supreme Legislature of this country. But does it therefore follow that the inferior Legislatures have no exclusive and peculiar powers? The Constitution of the United States, interpreted by the Supreme Court, is the law of the whole land, and all legislatures and all bodies must observe it, and none have the power to contravene it; but does it therefore follow that no bodies have exclusive and peculiar prerogatives? The power of dividing counties belongs to State Legislatures. Has Congress a similar power? If the Legislature divide one county into two, can Congress unite them again? No. Then the power of the Legislature in this matter is exclusive, although Congress be the Supreme Legislature of the nation. This is a power which has never been delegated to the General Government. And the fact of its being the supreme Legislature, does not invest it with it. So much then for the analogy of the two governments.

There is another argument against the constitutionality of the act of the Assembly, arising from the regular operation of complaints. It will be recollected that this matter was brought before the Assembly by a complaint against the decision of Synod refusing to divide the Presbytery of Philadelphia, and by a petition to the Assembly to make such division. The Assembly sustained the complaint; and according to the Book, the complainants, with their petition, were, by the act of Assembly sustaining their complaint, again before the Synod, in the same attitude in which they stood before the decision of Synod was made. "If the complaint appears to be well founded, it may have the effect, not only of drawing down censure upon those who concurred in the judgment complained of, but also of reversing that judgment, *and placing matters in the same situation in which they were before judgment was pronounced.*" See Chap. VII. Sec. IV., V. The only effect of a complaint, when sustained, is to censure the body complained of, or to reverse their judgment; not to make for them a new judgment, but to place matters in the same situation in which they were before the judgment was pronounced. Censure was not the effect of this complaint, for the complaint was sustained expressly without casting censure on the Synod. The effect of the complaint then was to place matters in their former situation before the Synod, or it had no effect. The act of the Assembly, then, sustaining the complaint, referred the whole matter to the Synod, and immediately afterwards took it out of the hands of the Synod by acting on the petition. Now the point to which I aim in this argument is here. Pending the complaint, the Synod of Philadelphia were out of the house. This was right. But when the complaint was issued and the judgment of the Synod reversed, and matters placed in their former state before the Synod, were they constitutionally debarred a seat, during the action of the Assembly on the peti-

tion? This is the vital question. That the petition was tacked to the complaint, and that the Assembly acted upon them simultaneously, I am aware; but was this course authorized by a single paragraph in the Book of Discipline? And can a novel expedient wrest from the Synod their constitutional rights? I might reinforce this argument by the consideration that the petition on which the Assembly acted was an original petition, and never before the Synod. It was not the petition which the Synod rejected, but was materially different. Besides *two* who had deceased before the meeting of the Assembly, and *one* removed, *seven* other names are omitted in the petition on which the Assembly acted; thus placing the Synod before the Assembly, in the attitude of rejecting a petition which never was before them, and which they never saw; and thus too exhibiting the Assembly as acting in the confused and contradictory character of a court of appeals and of a court of original jurisdiction, at the same time. It was said, and urged with importunity, that the *principle* of both petitions was the *same*, and therefore the change of names did not make it a different petition; but this went upon the assumption, that the *sole ground* on which the Synod rejected the petition, was the *principle* it involved. This was not the case. They were influenced in their decision by the fact, that ministers, churches and elders, were included in the petition, who had not been consulted, and who were known to be hostile to the measure; and that, if the petition were granted, these very ministers, churches and elders would be a minority in a Presbytery where they would be without influence. This was declared by a member of the Synod, on the floor of the Assembly, to have been the reason why he voted against the petition to the Synod. But now a petition comes up before the Assembly with the whole ground of this objection removed, and yet it is pressed upon the Assembly as the very same petition which was rejected by the Synod—and which rejection is the ground of complaint—and thus branded as it was with broad absurdity upon its very face, the Assembly *sustained the complaint!* The facts on which I ground this argument are admitted facts. Now if the petition was before the Assembly under the complaint, then the effect of the complaint was not to place matters before the Synod in their original situation, which is contrary to the express words of the Book, and the action of the Assembly, consequently, unconstitutional. And that the petition was considered before the Assembly, under the complaint, was repeatedly urged as a reason for the action of the Assembly; and is further shown by the fact, that instead of placing matters before the Synod in their original situation, they enjoined it upon Synod to receive the Presbytery thus set off: thus, not only reversing the judgment of the Synod, but making a new judgment for them, and requiring them to sanction it, and act under it, which is also contrary to the express words of the Book.

But if the petition was not before the Assembly under the complaint, on what ground was the whole Synod deprived of a vote on the question, whether or not, the petition should be granted? Here

is the dilemma. Viewed either way, it is unconstitutional. Were the two questions purposely mixed up with the view to bring upon the petition the operation of a complaint, excluding the Synod from a vote? This too, was a violation of the constitutional rights of a Synod. Look at the measure in every light and it will be seen to be wholly unconstitutional.

We come now, Moderator, to examine the cases cited by Dr. Ely, as precedents, for the exercise of the power of erecting Presbyteries within the bounds of a Synod. That the Assembly may erect new Presbyteries where the jurisdiction of no Synod extends, we have never questioned. That the Assembly may unite Presbyteries connected with different Synods, is also admitted. But the case before you is wholly a different one. Here the Synod of Philadelphia had undisputed jurisdiction. Upon an examination of the cases cited by the Doctor, not one will be found to be in point. The decision of no one of them involved the principle now questioned.

The first case adduced was the division of the Presbytery of Carlisle, by the Assembly of 1794. In this case, one of the Presbyteries constituted by the division, took in part of the Presbytery of Redstone, which belonged to the Synod of Virginia; whereas the Presbytery of Carlisle belonged to the Synod of Philadelphia. (See published Extracts from Minutes of 1794, p. 18.; also of 1802, p. 7.) Thus it will be perceived, that it is a case where it was impossible for either Synod to act, and where the power of the Assembly is admitted. And it is therefore a case widely different from that now before you.

The next case was the division of the Presbytery of Albany, by the Assembly of 1802. This division took place under the old constitution, in which no specific power to divide Presbyteries was delegated to Synods. In the year 1820, certain amendments were sent down to the Presbyteries for their adoption, one of which was that of giving to Synods the power of dividing, uniting, and erecting Presbyteries. All the cases, therefore, of a prior date are irrelevant to the present question. And, indeed, before the amendment now alluded to, the Assembly seemed to question its own power in the case, for a part of the report on the division of the Albany Presbytery, which was adopted by the Assembly, expressly forbids that division ever to be cited as a precedent in any future Assembly, as the MS. minutes will show. This prohibition is strangely disregarded by the Doctor, who now presses it on this court as a precedent; especially, as he is so great a stickler for unqualified submission, and passive obedience to the acts and orders of the Assembly.

The division of the Presbytery of Oneida in 1805, next cited by the Doctor, also took place under the old Constitution and therefore is not a case in point.

The next case was the constitution of the Presbytery of Chenango, by the Assembly of 1826. This Presbytery was composed, when constituted, of members, of no less than *three different Synods*, viz: the Synods of Geneva, Albany, and New Jersey. (See Minutes for

1826, pp. 21, 66, 68, 74, 76.) This was also a case where the Presbyteries concerned, were attached to different Synods, and therefore, not a case in point.

Another case cited by the Doctor, was the erection of the Presbytery of Detroit by the Assembly of 1827. This Presbytery was made to consist of churches from two different Synods. The churches of Farmington and Potinac, belonged to the Synod of Geneva, and the church of Detroit belonged to the Synod of the Western Reserve. This also, was a case in which no Synod could act, and in which the power of the Assembly is not doubted.

The last case mentioned by the Doctor, was the translation of a church from one Presbytery to another, by the Assembly of 1827. Here the Doctor contended, that if the Assembly could translate a church from one Presbytery to another, much rather could they unite and divide Presbyteries. But the Doctor took good care not to tell you that these two Presbyteries belonged to different Synods. Look at the Minute, p. 114. "The Committee of Overtures also reported an application from the church of Danville, in the *Presbytery of Bath*, in the Synod of Geneva, to be set off from said Presbytery, and annexed to the *Presbytery of Ontario*, in the Synod of Genessee. The above application was granted." Why did not the Doctor read this minute to the court? Did he wish to deceive them? Did he not know it was a case not in point? Are such means to be used to gull this Assembly? Does a good cause need such expedients to sustain it?

In connection with the foregoing cases, where no one Synod had jurisdiction, and where the Assembly, therefore, was alone competent to act, let us look at a case, not cited by the complainants, where a Synod had full power to grant the petition preferred to the Assembly. The case as briefly reported in the digest, is as follows: "The Committee of Overtures laid before the Assembly (of 1808) an application from the Presbytery of Huntingdon, for a division of that Presbytery. *Resolved*, That the Presbytery make their application to the Synod (of Philadelphia) to which they belong, being the most proper judicature to decide the case." (See Digest, p. 44.) In the foregoing cases we see that the Assembly acted where the Synod could not, and that it refused to act where the Synod might; thus clearly settling the question, agreeably to the construction for which we contend.

Thus it appears that every case, as cited by Dr. Ely, contradicts the argument he has based upon them, and confirms that which they were designed to destroy. I will not say that the Doctor knew these cases were not in point. I do not impeach his veracity. He has entirely mistaken the real point before the court, and therefore did not see the material discrepancy between his supposed precedents, and the case at bar.

Moderator, I have thus attempted to follow the complainants in the argument on the power of the Assembly to erect new Presbyteries within the bounds of a Synod, although, as I before remarked,

this is not the question now before the court. Admitting, for the sake of argument, that the Assembly have this power, in what possible way does it affect this case? You are not now asked to decide whether the *Assembly* may unite and divide Presbyteries, but whether *Synod* may not perform these acts. It is strictly a question as to the power of Synod: and ought not to have been embarrassed by extraneous difficulties, nor by irrelevant discussion. And this question has not been even touched except by one of the complainants, and by him, only touched. A stranger, ignorant of the real point in debate, never could have conjectured from the argument of the complainants, that the question before you was, had the Synod of Philadelphia the right to do the thing now complained of by the Second Presbytery. Were the complainants afraid to grapple with this question, or was it designedly passed over, without even a respectful notice, in order that their arguments may be reserved for their reply, to which, according to your adopted order, we are not at liberty to rejoin?

But let us hasten to the consideration of the Synodical act itself. And in relation to it there are two points. 1. The expediency of it. 2. The constitutionality of it.

1. As to its expediency, that is a question which the Book refers to the wisdom and discretion of the Synod itself. 2. As to the right of Synod to do the act complained of, there are two questions to be considered.

1. Does the Constitution give to Synod the power in question?

2. Can the Synod constitutionally exercise this power in opposition to the judgment of the General Assembly clearly and previously expressed?

1. On the first point we shall cite the Constitution, as sufficiently explicit and satisfactory. "The Synod has power to receive and issue all appeals, &c. &c.; to erect new Presbyteries, and unite or divide those which were before erected; generally to take such order with respect to Presbyteries, sessions, and people under their care, as may be in conformity with the word of God, and the established rules, and which tend to promote the edification of the church." See Form of Government, Chap. XI. § IV. Here we conceive the power under consideration to be expressly granted to the Synod.

2. On the second point, let it be observed that the power thus granted is not restricted by any subsequent provisions, but extends to the union and division of Presbyteries "which were before erected," whether by the General Assembly or any other body claiming a similar authority. In order to make the Book speak the language of the complainants, it should have been added immediately after the words "before erected," *except where either or both of the Presbyteries have been erected by the General Assembly, or except where that body has expressed a contrary judgment.* But the framers of the Book never dreamed of that legislating construction which is now advocated and applied. In giving to the Synod the power of uniting, they never supposed that the Assembly possessed the power

of dividing, or that their judgment could obstruct the exercise of constitutional power by the Synod.

That the Synod cannot exercise this power in opposition to the judgment of the Assembly, *is a mere inference.* If not, point out the passage where the restriction of power is expressed. But be it remembered that the delegation of power to the Synod is explicit and undeniable. Now, it is a plain principle, that no inference or implication, unless it be necessary and inevitable, can possibly affect the clearly ascertained rights of an individual or a body. An express grant of power is never to be restricted by a mere inference. Again, the delegation of this power to the Synod was not by the Assembly, but by the Presbyteries in their adoption of the Constitution. And can the General Assembly restrict a power which they never granted? The General Assembly have no authority to grant to the Synod such a power as is now in question, supposing the Synod did not already possess it. And can the General Assembly restrict or modify a power which they are not competent to grant? If the General Assembly by the previous expression of their judgment in a case, may debar the Synod from the exercise of a constitutional power, then the Assembly may virtually set aside so much of the Constitution as guarantees that power to the Synod. This is consolidation with a vengeance!

The doctrine, then, which we oppose, is this—that the General Assembly, in the enumeration of whose powers that of uniting and dividing Presbyteries is not even hinted at, may nevertheless at pleasure exercise it, without the possibility of being debarred, even by the previously expressed judgment of a higher judicatory; while the Synod, to whom this power in so many words is expressly granted, cannot exercise it, if the Assembly forbid it by a previous judgment. And all this, be it remembered, *is bare and bald inference.*

The Constitution says to the Synod, you may divide and unite Presbyteries before erected. The Assembly says, you shall not. The Constitution gives the power, and the Assembly forbids its exercise. Here then then is a Controversy between the Constitution and the Assembly—between the instrument creating, and the body created. The Book declares that the Assembly have no power to alter or amend the Constitution, but it is *inferred*, that the Assembly may, in a given instance, set aside the Constitution, and overrule its express provisions.

The only question then that it seems necessary to settle on this point is, whether or not the Synod have the right in question: if they have, it is plain that no other authority, inferior to that which granted it, (viz: the Constitution) can possibly destroy or abridge it. The contrary would be a contradiction in terms.

It is indeed asserted in so many words, that because the Assembly divided the Presbytery of Philadelphia, therefore the Synod can never unite them again. This is going a step farther still. It is contending not only that the Assembly has the power of dividing the Presbytery, but that the Synod have no right ever to unite them again. When a

Synod divides a Presbytery, and whose right to do so is not questioned, that Synod may unite them again when it sees proper; but when the Assembly divides a Presbytery, whose right is not only questioned, but denied, the Synod can never unite them! From this construction it would seem that the wrongfulness of the act, makes it irreversible! We had thought it quite sufficient for the Assembly to claim the power of uniting and dividing Presbyteries, but that it should push its claim so far as to deprive the Synod of a similar power, when clearly and undeniably granted to it by the Constitution, is preposterous. Are the acts of the Assembly like the laws of the Medes and Persians? Is the affinity Presbytery, that pet of the Assembly, that only begotten child, that offspring of unlawful love; is that Presbytery an independent, and immortal body, in the bosom of the Synod; yet beyond its control, and not subject to its constitutional jurisdiction? I ask, Moderator, can the Assembly attach to a Synod, and is a Synod bound to receive a Presbytery, which it may not control, divide or destroy, as it may the other Presbyteries within its bounds? What an anomaly in the Presbyterian church!

But it is contended by the complainants, that the act of Synod was void, either because of want of power in the Synod, or because of the informality of the act. For you will notice that they regard the act of Synod only as an "*attempt*" to do the thing "*designed.*" "The Presbytery thus *attempted* to be annihilated," &c., is their language. And the same idea is studiously held up throughout the paper, and yet they have made this mere "attempt" and "design" the subject matter of a grave and formal appeal! With one breath they declare the act of Synod to be void, and a mere "attempt," and with the next, contradict themselves, by acknowledging that there was something done from which they appeal, and of which they complain. They surely do not mean to mock and sport with the Assembly, by complaining of an act that was not done, but only *designed and attempted.* Why buckle on their armour and march forth to fight a shadow. Carrying out the idea, that the act of Synod was void, and therefore could not affect their Presbyterial existence, they continued to perform Presbyterial acts. But was the act of Synod void? That the Synod had the requisite power to act, we have already shown. Does the want of formal accuracy in the resolutions, even admitting its existence, counteract or destroy their efficient operation?

The complainants themselves have answered this question by complaining. This informality vitiates either the whole or a part only of the action of the Synod. If the whole, then there is no ground of complaint, for the Synod performed no act in the case. Their attempt to act was an entire failure. To complain against an act is to acknowledge its existence and vitality. For a complaint seeks a shield against its operation. If this informality vitiates a part only of the action of Synod, it must be that only which attempted a *division* of the Presbytery constituted by the union of the First and Second Presbyteries. But the complaint acknowledges this division

by declaring, that "in consequence of this defect (using the informal word 'divide') the Presbytery of Philadelphia must be held not yet to exist in Presbyterial order." But if no *division* was really effected, because of informality, then the Presbytery of Philadelphia does exist, as constituted by the *union* of the two. The informality of the instrument might be said to render doubtful the existence of the New Second Presbytery, but not the First. Besides, if only that part of the action of Synod which contemplates the division be null and void, the objection we are considering cannot effect the union of the two Presbyteries, which therefore was not a nullity. The validity of the union, and of course the annihilation of the former Second Presbytery by that union, are resolved into the first question as to the power of Synod, which we have already discussed. And from this second difficulty which respects the validity of the division, the complainants can derive no advantage.

The complainants say, "*The united Presbytery* of the foregoing minute having been *divided*, and the continued existence of the former Presbytery of Philadelphia, not having been declared, some time should have been named for the constitution of the Presbytery south of Market street; and in consequence of this defect, the Presbytery of Philadelphia must be held not yet to exist in Presbyterial order." § VII.

This is a curious specimen of Presbyterial exposition. It is a comment on the act of Synod to this effect. The Synod of Philadelphia in attempting to destroy the Presbyterial existence of the former Second Presbytery of Philadelphia, though this was their declared object, have nevertheless entirely missed the mark, and unwittingly given a fatal blow to the old Mother, whom the Synod designed to cherish and continue in existence. The official expression of the above opinion by the former Second Presbytery, after the act of Synod, is a declaration of their own continued existence, while the opinion thus expressed is, that the Presbytery of Philadelphia "no longer exists in Presbyterial order." The intention of Synod is fully admitted in the appeal and complaint. The appeal professes to be against what the Synod attempted and designed to do. They appeal "from so much of the above recited decision as was *designed* to unite the Second Presbytery of Philadelphia with the Presbytery of Philadelphia." You will here observe a singular dilemma in which these appealing brethren are placed. They contend that either from informality or want of power, or from both, the act of Synod was void; and yet that it was effectual in destroying the existence of the Presbytery of Philadelphia. If the act of Synod was void, being a mere "attempt" and "design," with what propriety could they say that in consequence of it, "the Presbytery of Philadelphia must be held not yet to exist in Presbyterial order?"

By dividing the Presbytery of Philadelphia, the Synod meant to set off all those ministers and churches north of Market street, and to constitute them a new Presbytery. And that the first Presbytery should continue to exist, with the addition of all those south of said

line, who belonged to the former Second Presbytery. Not one member in Synod doubted for a moment what was the intention of Synod. No one even suggested the difficulty now made. Is it for a moment to be supposed, that the Synod would deliberately annihilate the Presbytery of Philadelphia without making Presbyterial provision for its members? And is it to be supposed, that when the Synod added members to that Presbytery, they intended by that act, to destroy its existence? Preposterous! Again, the fact of the Synod's taking no order for the organization of the Old Presbytery, sufficiently declares their meaning. If they had considered that Presbytery to be newly created by their act of division, would they not have taken order for its proper organization, as they did for the organization of the New Second Presbytery? Construe this remedial act liberally, compare one part of it with another, and consult the evident intention of the Synod, and that must be a strangely perverted mind, which can still regard the act of Synod a nullity, in whole, or in part, because of informality.

As to the difficulty which some profess to feel in regard to the location of some of the members of the Presbyteries, it is only necessary to observe that they have a residence somewhere. They are not without "a local habitation or a name." The line dividing the two Presbyteries, extends "as far as necessary," that is, round the globe, if it be "necessary." It is easily ascertained who *reside* north and who *reside* south of said line.

But if, for any cause, the act of Synod was void, and if this Assembly should so declare it, how can the Second Presbytery appear before your bar as a party with an appeal? If the act be void, then that Presbytery was not a constituent member of Synod, or if it were, it was made so by the act of Assembly in 1832. This is the point I some time since promised to notice. The act of the Assembly is very explicit: "*Resolvea*, that said Second Presbytery of Philadelphia is hereby declared to belong to the Synod of Philadelphia, and is attached to the same as an integral part thereof." Minutes for 1832, p. 322. From this it appears that in the judgment of the Assembly, that Presbytery was in fact made a member of the Synod at that time, and still continues such. If so, it has been in the Synod for two years. But the complainants have told you, that their connexion with the Synod was only momentary—that the same act which received, amalgamated them. This is the burden of their complaint. The Assembly will surely adhere to its own minute in the case. For it is a material argument with the complainants, that the Assembly should recognize and maintain is own acts. The Assembly must regard that Presbytery as having been really connected with the Synod from the date of its own minute. If so, the ground of complaint has no existence, for instead of being in the Synod but for a moment, they have been in it for two years. And pray, Moderator, how long must a Presbytery be in connexion with a Synod before that Synod can exercise its authority in dividing it? If two years are not sufficient, how many are? But if that Presbytery were not a member of Synod

till received in the fall of 1833, by the act now complained of, how, I ask again, can they appear as a party at your bar with an appeal? Besides, if they were not in connexion with the Synod till 1833, it must be in consequence of the refusal of the Synod to receive them in the fall of 1832. But that refusal you have called nullification, and have declared void, by still recognizing them on your minutes as in connexion with that Synod. How do these things hang together? I confess, Moderator, that this is a dilemma, from which the complainants cannot be easily extricated.

We have heard much of nullification. But who, in the case before you, are the nullifiers? The Synod who have received the Second Presbytery under the order of the Assembly, or the Second Presbytery in resisting the acknowledged authority of the Synod? Must the Constitution of the Church be made to bend to the will and wishes of a party, and that party a minority in the Synod whose act is thus resisted?

The acknowledged constitutional authority of the Synod, in the present instance, has been openly, avowedly, and perseveringly resisted by the Second Presbytery, with a confident reliance upon the countenance and support of this Assembly. Their act of nullification, however, is attempted to be shielded, if not concealed, by an appeal and complaint. By this appeal and complaint, they have voluntarily placed the matter *sub judice* before the supreme judicatory, but such is their confident hope of a favourable decision by this body, that they ventured to act upon an anticipated decision. They appealed to the Assembly and then proceeded to decide their own appeal, by continuing to act as if the Synod had passed no order on the subject. Thus taking the law into their own hands, they have both presumed upon, and anticipated the judgment of the Assembly in the case which they have gravely submitted to them. Is not that Presbytery at present acting just as if the Assembly had decided in their favour?

It is saying—"Gentlemen of the Assembly! You may decide this matter as you please. Your previous decisions in our case, have committed you to a favourable entertainment of our appeal at this time, and we are therefore determined to act in accordance with what, in our opinion, your decision *ought to be.*"

The former Second Presbytery, since their dissolution by the acknowledged constitutional authority, proceeded to ordain and install a brother. They also received and licensed a candidate, who had been dismissed from the Presbytery of Philadelphia to a Presbytery in Virginia. They have taken from a church session, over whom they have no jurisdiction, and against their consent, the control of their own vacant pulpit, thus encroaching upon the jurisdiction and violating the rights of the real Second Presbytery north of Market street, and also virtually deposing that session without a hearing or a trial.

But a few hours since, and while the matter was actually under discussion in this court, they met and performed Presbyterial acts, just as if their existence as a Presbytery were not a matter of grave

debate in the highest court. And what is more, you were formally invited to attend and witness their proceedings. This, Sir, is like an infatuated girl, who asks her father's consent to a proposed matrimonial connection, and while he is deliberating on the matter, and making up his mind, she invites him to witness the ceremony. Sir, it is as if a criminal should be arraigned at the bar of a civil court on the charge of murder, and while the jury are determining on a proper verdict in the case, they are summoned to witness his execution. Sir, that Presbytery have submitted to you the serious question, whether or no they have any existence at all as a Presbytery, and before receiving your answer, have asked you to witness their Presbyterial acts! Delicacy, Moderator, if not a respect to the opinion of this court, should have dictated a different course, and have induced them at least, to await your answer with dignity and decorum. Sir, I must regard such proceedings, either as a too confident reliance on the partialities of this Assembly, and a too bold presumption upon your party spirit, or as a practical disregard of whatever judgment you may render in the case.

Although these acts are wholly unconstitutional, irregular, oppressive, and void as to authority, yet you must not be surprised if they be urged before this court, as reasons for hearing and sustaining the appeal and complaint. It will perhaps, be said with great earnestness— "O do not sanction the proceedings of Synod, for if so, in what a predicament will you place some good brethren and churches?" Thus, Sir, the very gaping, bleeding wounds, which have been inflicted upon our suffering and trampled Constitution and discipline, will be urged as reasons for not applying an efficient remedy, and raising it from the dust of the earth.

But, Sir, it is hoped that the rashnes and indiscretion of excited brethren, will not be listened to by this court, as arguments in a question, so vitally affecting the Constitution and character of our church.

Moderator, of what does the Second Presbytery complain? Is it of the whole act of Synod, or of a part only? At one time it is contended by the complainants that the act of Synod must be regarded as but one act, and at another time, that it must be regarded as a series of separate acts. If the act be treated as one, then their reception is a matter of complaint. They have, indeed, specified so much of the act as unites them to the Presbytery of Philadelphia. But if this were perfectly within the power of Synod, it cannot be the subject matter of complaint, unless it can be shown to have been a wrongful exercise of power. When the Assembly attached that Presbytery to the Synod, it invested the Synod with the constitutional control of it. Of this the complainants seem to have been aware, when they specify as the ground of complaint, that as a Presbytery they were not consulted. On this point I observe, first, that inasmuch as the opinion and feelings of that Presbytery on this subject were notorious, and familiar to all, it would have been a mock procedure, a mere sham consultation, had they been previously conferred with, in rela-

tion to the measure. Besides, was the Presbytery of Philadelphia consulted when they were divided by the Assembly? It is certainly proper that there should be consultation, in ordinary cases, but when by their published acts the views of the Second Presbytery are well known, there is no occasion for such consultation, and no favourable results could follow from it. The ground of complaint, therefore, is a mere quibble, and betrays the meagerness of the cause of which it is a part. I observe, secondly, that if the Assembly sustain the complaint on that ground, it is hoped for their own sakes, that they will be consistent with themselves. I understand, that if the affinity Presbytery be re-erected, an application will be made to you, for the erection of an affinity Synod for its especial accommodation. Consistency, as well as common justice, will require, that before the request be granted, the Synod of Philadelphia be consulted on the subject. We shall see, Moderator, and the world shall see, whether you are disposed to dispense even handed justice, or whether, for party purposes, you will blow hot and cold with the same breath. Do not, I beseech you, Moderator, expose yourself to the indignant censure of the community, by doing for a spoiled child, a favourite of your regards, the very thing for which you are about to condemn the Synod of Philadelphia. "Consistency is a jewel." Do not give to the world a just occasion to remark, that you have adopted the odious, Jesuitical maxim—"the end sanctifies the means." Do not act *unconstitutionally* for the sake of *expediency*, as you have been exhorted to do.

It has been affirmed that the Synod refused to divide the Presbytery of Philadelphia in any way. This is true. And Mr. Patterson has stated to you that this was the ground of complaint in 1832. Sir, when the doctrine of elective affinity was of doubtful popularity, the argument for division was, *extent of territory* and the *press of business*. But on the floor of Synod, a division on geographical principles was strenuously opposed by those who argued for a division on the above grounds. It was contended, that the Assembly had recommended a division in *such a way* as would promote peace. But the Synod were not allowed to judge of what mode of division would promote peace within its own bounds. And the Assembly must be called in to legislate for a Synod, with whose local interests and peculiar circumstances the great majority of the Assembly were perfectly ignorant. And, Sir, did they effect such a division as lessened the "*extent of territory?*" Sir, have they not erected a Presbytery, whose limits, if indeed it can be said to have any at all, are co-extensive with those of the General Assembly? Sir, it is a new General Assembly, a new and distinct denomination, that you have erected in our bosom. And such a division is the only one to which the complainants would submit. They now tell you, by their complaint, that they will have no other. They dictate to you as to the course you are to pursue in their case. And if you refuse to listen to that dictation, you are threatened with desertion. They say—

"If the whole Presbyterian Church, represented in the General

Assembly, to which it is the peculiar privilege of the humblest individual in any one of our Presbyterian congregations to bring his cause, without contumacy, for ultimate decision, shall confirm the doings of the Synod against us, we shall, like good Presbyterians, submit to its decisions, without following the example of nullification which has been set us by the Synod of Philadelphia, or shall respectfully withdraw ourselves from that extended, honourable, orthodox and pious denomination of Christians to which we now belong."

They do indeed throw out this threat in the cautious form of an alternative to submission. But if "submission to the Assembly, right or wrong," be their motto, why hint at a withdrawal from your connection? I regard this insinuation, Moderator, as bringing in an extraneous influence, calculated, if not designed, to bias improperly the minds of this court. It is throwing this house upon a balance, and compelling them to decide between the *propriety* of sustaining the Constitution, and the *expediency* of a measure which may drive the complainants to a secession. But, Moderator, you need never apprehend a secession from that quarter. The orthodox may be driven, by ultra measures, to a secession. They, in all ages of the church, have been the seceders. Errorists never secede, when they can "divide and conquer." If the complainants, and those who symbolize with them, are such lovers of peace, and do so sincerely desire it, why do they not leave us, and cease to be the occasion, if not the cause, of strife in our midst. Let them leave us, and the sword of internal controversy will be sheathed, before the setting of to-morrow's sun.

Moderator, the Synod of Philadelphia adopted the measure now complained of, as a measure of peace. It was sincerely believed by its advocates that it would be so regarded by the church generally, and that it would satisfy every reasonable and pacific mind in the affinity Presbytery. It was dictated by no party feelings. It was the only alternative to a continued rejection of that Presbytery. Had it been a party measure, you would have found a very different array of names on both sides of the question. It was, indeed, in opposition to the principle of elective affinity. This principle the Synod do both "condemn and reprobate." And they have yet not learned to act on the principles which they condemn in others. Should they become imbued with the spirit of "*improvement*," I know not what they might do hereafter. The Synod could not sanction the existence of such a Presbytery in their bosom. They believed it to be not only at variance with, but destructive of, the Constitution. You are, nevertheless, asked to continue it. You are asked again to sanction and act upon this proscribed principle. Let those who condemn this principle, and who will yet vote to sustain this Presbytery, justify their consistency, and reconcile their conduct, at the bar of public judgment, of conscience, and of God.

Should you again erect that Presbytery, and leave it under the control of Synod, the same disposition may be made of it next fall, as that now complained of. The Constitution of the church gives

to Synod this right, and you can neither destroy nor abridge it. Besides, you will in that case, put the Third Presbyterian church of this city, in that awkward predicament, in which it was placed by the wisdom of the Assembly of 1832. The different sessions embraced in the New Presbytery, had their election to go with the New or remain with the Old. That session have remained in connection with the Old.* But should their pastor, Dr. Ely, who belongs to the New Presbytery, wish to be separated from his present pastoral charge, which Presbytery would be competent to dissolve the pastoral relation? Here is a difficulty which it becomes you to obviate.

We now leave the case with God and this court. On your decision much depends. On you devolves, at this crisis, a fearful responsibility. Act in the fear of God, and in view of the judgment day. For the effects of your vote in this case, will, I doubt not, be felt by generations yet unborn.

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* Dr. Ely contradicted this statement, and gave an *explanation*, in connection with the record of his session in the case. But it can be proved that not one member of his session (including the Doctor himself, up to the time when he thought it politic to *change* his opinion) understood the act of session read by him in the Assembly, in the sense in which he explained it. The proof, apart from the individual opinion of each member, is furnished by a *subsequent* sessional act, viz: the appointment of one of their number to attend the meeting of the Old Presbytery. And if this appointment be not recorded in the session book, it may be accounted for, by the fact, that Dr. Ely is both Moderator and Clerk of session. But a *new explanation* is now given of the record of session, read in the Assembly, by which it is made to speak what the session, as then constituted, never intended it should mean.

While preparing this speech for the press, I addressed a very respectful note to Dr. Ely, requesting him to favour me with a copy of the minute of session read by him in the Assembly. My object was, to see if I had misrepresented the case, and if so, to correct it in the printed speech. I received the following reply—on which I make no other comment than this—that whatever charges against me are *insinuated* in the note I indignantly repel as false and slanderous.

"The Rev. Mr. Winchester is respectfully informed, that those persons who have endeavoured to sow dissension in the Third Presbyterian Church in Philadelphia, will have the opportunity of reading the record of session, for which he has inquired, in due time.

EZRA STILES ELY.

Philadelphia, June 16, 1834."